

June 2, 2006

SETTLEMENT AGREEMENT FOR IMPLEMENTATION OF REMEDIAL  
INVESTIGATION AND FEASIBILITY STUDY AT THE UPPER COLUMBIA  
RIVER SITE

I. NATURE OF AGREEMENT

1. This Settlement Agreement ("Agreement") is made and entered into by the United States, on behalf of the U.S. Environmental Protection Agency ("EPA"), and by Teck Cominco American Incorporated ("TCAI") and a separately incorporated affiliate, Teck Cominco Metals Ltd. ("TCM"), which is a Party to this Agreement solely for the limited purposes set out herein (collectively, the "Parties"). This Agreement concerns the Upper Columbia River Site ("Site"), which consists of the areal extent of hazardous substances contamination within the United States in or adjacent to the Upper Columbia River, including the Franklin D. Roosevelt Lake ("Lake Roosevelt"), from the border between the United States and Canada downstream to the Grand Coulee Dam, and all suitable areas in proximity to such contamination necessary for implementation of the response actions described below. The Site may include land and waters within the boundaries of the Colville Indian Reservation and the Spokane Indian Reservation, over which the Tribes have civil regulatory jurisdiction, as well as land and waters administered by the National Park Service and the Bureau of Reclamation within the U.S. Department of the Interior ("DOI"). The Parties enter into this Agreement to provide for the implementation of the activities described herein at the Upper Columbia River Site.

2. On December 11, 2003, EPA issued a Unilateral Administrative Order ("UAO") under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), directing TCM to perform a Remedial Investigation and Feasibility Study ("RI/FS") at the Site. The United States contends that discharges from the Trail Smelter, situated approximately ten (10) river miles north of the U.S.- Canada border, have contributed to releases of hazardous substances, as defined in CERCLA, at the Site. The United States acknowledges that other entities may have contributed to releases of hazardous substances at the Site. While TCM and TCAI deny that they have liability under CERCLA for the Site, TCM and TCAI have offered to enter into this contractual agreement with EPA to perform the tasks set forth herein.

3. The intent of the Parties to this Agreement is to perform a RI/FS for the Site as outlined in the Statement of Work ("SOW") attached hereto as Exhibit A. The Parties intend that this RI/FS process, while not carried out under an administrative or judicial order issued pursuant to the provisions of CERCLA, will be consistent with the National Contingency Plan ("NCP"), 40 C.F.R. part 300.



4. The Parties agree not to challenge the work performed pursuant to and in accordance with this Agreement as being inconsistent with the NCP. In addition to being consistent with the NCP, all activities performed to conduct the RI/FS (the "Work") shall be performed consistent with applicable EPA guidance, including the Draft Framework for Inorganic Metals Risk Assessment, as it may be modified or finalized by EPA, and, as reflected in the SOW, shall be based upon principles of risk-based analysis, bioavailability, empirical testing, and field confirmation. The Work shall be performed consistent with the foregoing and in accordance with the requirements, specifications, and schedules in this Agreement, the SOW and all work plans approved by EPA, which shall be developed, approved and overseen to reflect the provisions of this Paragraph and Agreement. These workplans are or will be incorporated by reference in, and shall be enforceable under, this Agreement. EPA may approve, disapprove, require revisions to, or modify all proposed work plans and all deliverables described in this Agreement, the SOW, or any approved work plan, consistent with the terms of this Agreement. However, EPA may not, under this Agreement, require TCAI to implement any action that is a material departure from this Agreement or the SOW unless it is required to ensure consistency with the NCP, nor find that TCAI is in material breach of this Agreement or seek access to the funds escrowed pursuant to Paragraph 49, based on TCAI's failure or refusal to implement any action that is a material departure from this Agreement or the SOW that is not required to ensure consistency with the NCP.

5. All work under this Agreement shall be performed subject to EPA oversight. The Parties agree that TCAI shall perform the RI/FS, either itself or through contractors it has funded, except where it is expressly provided in the SOW that other entities are to complete certain tasks, in which event TCAI will fund those tasks.

## II. DEFINITIONS

6. Solely for purposes of convenience for the implementation of the work described in this Agreement, and without TCAI's or TCM's accepting for any purpose the application of the substantive provisions of CERCLA to TCAI or TCM, the Parties adopt for terms in this Agreement the statutory definitions in CERCLA, 42 U.S.C. § 9601 et seq, except where this Agreement expressly provides another definition.

Whenever terms listed below are used in this Agreement or in any exhibit attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Settlement Agreement and any attached exhibits. In the event of conflict between this Agreement and any exhibit, the Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.



c. "Day" shall mean a calendar day unless otherwise specified in this Agreement. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "Decisionmaker" shall be the official(s) of the EPA designated herein, and/or in the Technical Review Process document attached hereto as Exhibit B and incorporated herein by reference, for review and determination of a particular issue arising under this Agreement.

e. "DOI" shall mean the United States Department of the Interior.

f. "Effective Date" shall mean the date of execution hereof by the last Party to execute this Agreement.

g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

h. "Final Decision" shall mean a final determination made by the Decisionmaker with respect to a matter under this Agreement.

i. "Future RI/FS Costs" shall mean all costs, including direct and indirect costs, which EPA, or the Department of Justice on behalf of EPA, incurs on or after the Effective Date of this Agreement in connection with the RI/FS for the Site. These costs, include, but are not limited to, all costs incurred reviewing or developing plans, reports and other items pursuant to this Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry ("ATSDR") costs, the Technical Assistance Plan ("TAP") costs referenced in Paragraph 13b. which shall not exceed \$50,000, costs associated with developing and implementing the Community Relations Plan, costs incurred pursuant to Paragraph 22 (costs and attorneys fees and any monies paid to secure access, including the amount of reasonable compensation), costs associated with Dispute Resolution and the Technical Review Process, costs incurred by EPA to obtain technical assistance to support EPA oversight of the RI/FS, or EPA's performance of the Human Health Risk Assessment, including, but not limited to, costs incurred by EPA for such technical assistance obtained from DOI, the Tribes, or the State of Washington, costs associated with fulfilling or arranging for the fulfillment of any of TCAI's obligations under this Agreement, and costs associated with performing or developing the Human Health Risk Assessment, the Proposed Plan, and Record of Decision. For purposes of this paragraph, with respect to DOI, the Tribes, and the State of Washington, "technical assistance" costs mean those costs incurred by EPA to contract directly with DOI, the Tribes, or the State of Washington to obtain that entity's unique expertise on a particular technical matter.



j. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

k. "National Contingency Plan" or ("NCP") shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300, and any amendments thereto.

l. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

m. "Parties" shall mean the United States and Teck Cominco American Incorporated, and solely for the limited purposes identified herein, Teck Cominco Metals Ltd.

n. "RI/FS" shall mean the Remedial Investigation and Feasibility Study to be performed in accordance with this Agreement to investigate the nature and extent of contamination at the Site, including performing the risk assessments for human health and the environment, performing studies and analyses necessary to identify Applicable or Relevant and Appropriate Requirements, and developing and evaluating potential remedial alternatives.

o. "Site" shall mean the Upper Columbia River Site, which consists of the areal extent of hazardous substances contamination within the United States in or adjacent to the Upper Columbia River, including the Franklin D. Roosevelt Lake, from the border between the United States and Canada downstream to the Grand Coulee Dam, and those areas in proximity to the contamination which are suitable and necessary for implementation of the response actions described in this Agreement.

p. "Start Date" shall mean the day that EPA transmits to TCAI the 2005 field data and notifies TCAI that it has done so, or the Effective Date of this Agreement, whichever is later.

q. "State" shall mean the State of Washington.

r. "Statement of Work" or ("SOW") shall mean the statement of work for implementation under this Agreement, together with Appendix A attached thereto, which are set forth as Exhibit A to this Agreement. The Statement of Work is incorporated into this Agreement and is an enforceable part of this Agreement.

s. "Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

t. "TCAI" shall mean Teck Cominco American Incorporated, a United States corporation incorporated under the laws of the State of Washington, and its successors and assigns.



u. "TCM" shall mean Teck Cominco Metals Ltd., a Canadian corporation incorporated under the laws of Canada, and its successors and assigns.

v. "Tribes" shall mean the Confederated Tribes of the Colville Reservation ("Colville Tribes") and the Spokane Tribe of Indians ("Spokane Tribe") through their governing councils, agencies, and departments.

w. "United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities.

x. "Work" shall mean the RI/FS activities carried out under this Agreement as provided in the SOW.

y. "Work Plans" shall mean detailed plans for activities, as described in Paragraph 8, below, to achieve specified objectives of the SOW.

### III. WORK TO BE PERFORMED

7. TCAI, through contractors, subcontractors, laboratories and consultants retained by TCAI, or through funding of activities performed by others where expressly provided in the SOW, shall perform the Work as set forth in the SOW, including Appendix A, and all future Work Plans agreed to between the Parties or as otherwise required under this Agreement. Within thirty (30) days of the Effective Date of this Agreement, and before the work outlined below begins, TCAI shall notify EPA, in writing, of the names, titles, and qualifications of the personnel, including contractors, subcontractors, consultants, and laboratories to be used in carrying out such work. The qualifications of the personnel undertaking the work for TCAI shall be subject to EPA's review, for verification that such personnel meet minimum technical background and experience requirements. If EPA disapproves, in writing, of the technical qualifications of any personnel, TCAI shall notify EPA of the identity and qualifications of the replacement(s) within thirty (30) days of the written notice. During the course of the RI/FS, TCAI shall notify EPA, in writing, of any changes or additions in the personnel used to carry out such work, providing their names, titles, and qualifications. EPA shall have the right to approve changes and additions to personnel hereunder.

8. The SOW, including its Appendix A, is an outline of the RI/FS to be performed under this Agreement. All Work Plans developed pursuant to this Agreement shall be designed to accomplish one or more of the objectives set forth in the SOW. The types of studies that TCAI may perform to complete the RI/FS are described more fully in the SOW and RI/FS guidance.

### IV. MODIFICATION OF WORK PLANS AND OTHER DELIVERABLES

9. EPA, subject to the provisions of this Agreement, may approve or disapprove, in whole or in part, require revisions to, or modify any proposed Work Plan or other deliverable. TCAI must fully correct all deficiencies and incorporate and



integrate all information and comments supplied by EPA either in subsequent or resubmitted deliverables. Except as otherwise specified, if EPA disapproves of, or requires revisions to a submitted document, in whole or in part, TCAI shall amend and submit to EPA a revised document which is responsive to the directions in all EPA comments within thirty (30) days of receiving EPA's comments. In the event that TCAI amends or revises a report, plan, or other submittal upon receipt of EPA comments and EPA subsequently disapproves of the revised submittal, or if subsequent submittals do not fully reflect EPA's directions for changes, EPA retains the right to seek liquidated damages, perform its own studies, complete the RI/FS (or any portion of the RI/FS) under CERCLA and the NCP, and seek reimbursement from TCAI for its costs, and/or seek any other appropriate relief. In the event that EPA takes over some of the tasks, but not the preparation of the RI/FS, TCAI shall incorporate and integrate information supplied by EPA into the final RI/FS Report.

10. If at any time during the RI/FS process, TCAI identifies a need for additional data for the RI/FS, TCAI shall submit a memorandum documenting the need for additional data to the EPA Project Coordinator within twenty (20) days of identification. EPA, in its discretion, may determine whether the additional data will be incorporated into the RI/FS Administrative Record.

11. In the event that TCAI becomes aware of conditions at the Site which pose an immediate threat to human health or welfare or the environment, TCAI shall immediately notify EPA and the State, and, in the event that such conditions should arise on land under the jurisdiction or control of the Colville Tribes, the Spokane Tribe, or DOI, notice shall also be provided to any entity with such jurisdiction or control. The appropriate contacts for EPA are as follows: National Response Center (800-424-8802), and Kevin Rochlin, EPA Project Coordinator (206-553-2106). EPA agrees to provide TCAI with the appropriate State and Tribal contacts within 10 days of the Effective Date. In the event of unanticipated or changed circumstances at the Site that are material enough to require modification of a workplan in TCAI's judgment, TCAI shall notify the EPA Project Coordinator by telephone within forty eight (48) hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the Work Plan, EPA shall modify or amend the Work Plan, in writing, accordingly. TCAI shall perform the Work Plan as modified or amended.

12. Subject to the provisions of Paragraph 4, EPA may determine that in addition to tasks defined in the initially approved Work Plan, other work may be necessary to accomplish the objectives of the RI/FS. EPA may require that TCAI perform these response actions in addition to those required by the initially approved Work Plan, including any approved modifications, if it determines that such actions are necessary for a complete RI/FS. TCAI shall confirm its willingness to perform the additional work, in writing, to EPA within fourteen (14) days of receipt of the EPA request or TCAI shall invoke dispute resolution. Subject to resolution of any dispute, TCAI shall implement the additional tasks which EPA determines are necessary. The additional work shall be completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the Work Plan or



written Work Plan Supplement. EPA reserves the right to conduct the work itself at any point, to seek reimbursement from TCAI, and/or to seek any other appropriate relief. In addition, the SOW may be modified at any time by written agreement of EPA and TCAI.

## V. COMPONENTS OF THE WORK/DELIVERABLES

13. a. TASK 1: SCOPING. TCAI shall conduct the scoping activities as described in the SOW. During scoping, TCAI shall provide EPA with the following deliverables:

i. Technical Memorandum on Risk Management-Based Action Objectives for Ecological Risk Assessment. Within ninety (90) days of the Start Date, TCAI shall submit a technical memorandum on ecological risk management-based action objectives, as described in the SOW. Revisions to this document shall be due fourteen (14) days after receipt of EPA's comments.

ii. RI/FS Work Plan. Within one hundred fifty (150) days of the Start Date, TCAI shall submit to EPA a complete RI/FS Work Plan. Because the RI/FS is being conducted in an iterative manner, there may be multiple addenda to the RI/FS Work Plan to take into account additional data requirements determined as the investigation progresses.

iii. Sampling and Analysis Plan. Within two hundred and ten (210) days of the Start Date, TCAI shall submit to EPA the Sampling and Analysis Plan ("SAP"). The SAP shall consist of a Field Sampling Plan ("FSP") and a Quality Assurance Project Plan ("QAPP"), as described in the SOW and guidance.

iv. Site Health and Safety Plan. Within two hundred and ten (210) days of the Start Date, TCAI shall submit to EPA the Site Health and Safety Plan ("HSP").

v. Cultural Resources Coordination Plan. Within two hundred and ten (210) days of the Start Date, TCAI shall submit to EPA the Cultural Resources Coordination Plan.

b. TASK 2: COMMUNITY RELATIONS PLAN. Consistent with EPA guidance and the NCP, EPA will prepare a Community Relations Plan to ensure meaningful opportunities for public involvement in the work to be conducted at the Site under this Agreement. TCAI will provide information as requested by EPA for distribution to the public and for public meetings which may be held by EPA to explain activities at or relating to the Site. In addition, within thirty (30) days of a written request by EPA, TCAI also shall provide EPA with a proposed Technical Assistance Plan ("TAP"). If EPA disapproves of or requires revisions to the TAP, in whole or in part, TCAI shall amend and submit to EPA a revised TAP which is responsive to the directions in all EPA comments, within fourteen (14) days of receiving EPA's comments. The TAP shall provide for up to \$50,000 of TCAI's funds to be used as a Technical Assistance Grant ("TAG") by a qualified community group meeting the requirements of



40 C.F.R. § 35.4020, except that the requirements of 40 C.F.R. § 35.4020(a)(1) shall be considered satisfied if the group could be affected by actual or potential releases at the Site notwithstanding the fact that the Site is neither listed nor proposed for listing on the CERCLA National Priorities List. The TAP funding shall be used consistent with 40 C.F.R. Part 35, Subpart M, to hire independent technical advisors to review documents or provide other assistance related to TCAI's Work under this Agreement.

c. TASK 3: SITE CHARACTERIZATION. Following EPA approval or modification of the Work Plan and Sampling and Analysis Plan, TCAI shall implement the provisions of these plans to characterize the Site. TCAI shall initiate the tasks described in the SAP within ninety (90) days of EPA approval or modification of the RI/FS Work Plan and Sampling and Analysis Plan. TCAI shall provide EPA with analytical data within ninety (90) days of each sampling activity, in an electronic format (i.e., computer disk) showing the location, medium, and validated results, consistent with the data management section of the QAPP. Within seven (7) days of completion of field activities, TCAI shall notify EPA, in writing. During Site characterization, TCAI shall provide EPA with the following deliverables, as described in the Statement of Work and Work Plan.

i. Technical Memorandum on Modeling of Site Characteristics. Where TCAI proposes that modeling is appropriate, within sixty (60) days of the initiation of Site characterization, if requested by EPA, TCAI shall submit a technical memorandum on modeling of Site characteristics, as described in the SOW.

ii. Preliminary Site Characterization Summary and Data Gap Evaluation. Within one hundred fifty (150) days of completion of the field sampling and analysis, as specified in the Work Plan, TCAI shall submit a Site characterization summary and data gap evaluation to EPA. If data gaps exist, a workplan and SAP amendment to meet those data needs will be submitted within ninety (90) days of submittal of the Site characterization and data gap evaluation.

iii. Remedial Investigation Report. Within ninety (90) days of completion of the final Site characterization summary and data gap evaluation, TCAI shall submit a draft remedial investigation report consistent with the SOW, Work Plan, and Sampling and Analysis Plan.

d. TASK 4: ECOLOGICAL RISK ASSESSMENT. TCAI shall complete an Ecological Risk Assessment during the RI/FS process. Within one hundred twenty (120) days after the RI/FS Work Plan is approved, TCAI shall submit to EPA an Ecological Risk Assessment Work Plan consistent with the SOW and in accordance with EPA guidance and the NCP. Following EPA's approval of the Work Plan, TCAI will begin preparation of the Ecological Risk Assessment, conduct a technical assessment, and provide an ecological risk assessment report describing the results to the EPA upon its completion.

e. TASK 5: TREATABILITY STUDIES. TCAI shall conduct treatability studies where EPA, in consultation with TCAI, determines they are needed. Major



components of the treatability studies include scope of studies, the design of the studies, and the implementation of the studies, as described in the SOW. During treatability studies, TCAI shall provide EPA with the following deliverables:

- i. Determination of Candidate Technologies and of the Need for Testing. This memorandum shall be submitted within thirty (30) days of the submittal of the RI report.
- ii. Treatability Testing Work Plan. If EPA determines that treatability testing is required, within thirty (30) days thereafter, or as otherwise specified by EPA, TCAI shall submit a Treatability Testing Work Plan, including a schedule. Revisions to this document are due to EPA within fourteen (14) days of receiving EPA's comments.
- iii. Treatability Study Sampling and Analysis Plan. Within sixty (60) days of receiving notice from EPA of the need for a separate or revised QAPP or FSP, TCAI shall submit a Treatability Study Sampling and Analysis Plan.
- iv. Treatability Study Health and Safety Plan. Within thirty (30) days of receiving notice from EPA of the need for a revised Health and Safety Plan, TCAI shall submit a Treatability Study Health and Safety Plan.
- v. Treatability Study Cultural Resources Coordination Plan. Within fourteen (14) days of the completion of the Treatability Sampling and Analysis Plan, TCAI shall submit a Treatability Cultural Resources Coordination Plan.
- vi. Treatability Study Evaluation Report. Within ninety (90) days of completion of any treatability testing, TCAI shall submit a Treatability Study Evaluation Report as provided in the SOW and Work Plan.

f. TASK 6: DEVELOPMENT AND SCREENING OF REMEDIAL ALTERNATIVES. TCAI shall develop an appropriate range of remedial options that will be evaluated through the development and screening of alternatives, as provided in the SOW and Work Plan. During the development and screening of alternatives, TCAI shall provide EPA with the following deliverables:

- i. Technical Memorandum on Refined Risk Management-Based Action Objectives. Where TCAI proposes that refined risk management-based action objectives are appropriate, within sixty (60) days after the completion of the Baseline Risk Assessment, TCAI shall submit a technical memorandum on Refined Risk Management-Based Action Objectives, as described in the SOW. Revisions to this document are due to EPA within fourteen (14) days after receiving EPA's comments.
- ii. Technical Memoranda of General Response Actions. Within fourteen (14) days of completing the Refined Risk Management-Based Action Objectives, TCAI shall submit technical memoranda of General Response Actions, as described in the SOW. Revisions to this document are due to EPA within fourteen (14) days after receiving EPA's comments.



iii. Technical Memoranda on the Development and Preliminary Screening of Remedial Technologies, Assembled Alternatives Screening Results and Final Screening. Within ninety (90) days of submittal of the memorandum on refined risk management-based action objectives, TCAI shall submit technical memoranda summarizing the development and screening of remedial alternatives, including an alternatives array document as described in the SOW.

g. TASK 7: DETAILED ANALYSIS OF REMEDIAL ALTERNATIVES.

TCAI shall conduct a detailed analysis of remedial alternatives, as described in the SOW and Work Plan. During the detailed analysis of remedial alternatives, TCAI shall provide EPA with the following deliverables and presentation:

i. Technical Memorandum on Comparative Analysis. Within ninety (90) days of submission of a memorandum on the development and screening of remedial alternatives, TCAI shall submit a report on comparative analysis to EPA summarizing the results of the comparative analysis performed among the remedial alternatives.

ii. Draft Feasibility Study Report. Within ninety (90) days of the completion of the technical memorandum on comparative analysis, TCAI shall submit a Draft FS Report which reflects the findings in the risk assessments. TCAI shall refer to the RI/FS guidance for report content and format. The final report and the administrative record shall provide the basis for EPA's Proposed Plan under CERCLA §§ 113(k) and 117(a), which will document the development and analysis of remedial alternatives.

14. EPA may require TCAI to stop work, temporarily or permanently, on any task, activity, or deliverable at any point during the term of this Agreement. Should EPA require TCAI to cease work, EPA shall in coordination with TCAI, set new deadlines for that work, and any subsequent work for which the schedule is affected by the work cessation. Neither EPA's failure to expressly approve or disapprove of TCAI's submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA. For the following deliverables, TCAI shall not proceed further with any subsequent activities or tasks until receiving EPA approval: RI/FS Work Plans, Sampling and Analysis Plans, Cultural Resources Coordination Plans, Draft RI Reports, Draft Ecological Risk Assessment Work Plans, Ecological Risk Assessment Reports, Treatability Testing Work Plans, Treatability Study Sampling and Analysis Plans, and Draft FS Reports. While awaiting EPA approval on these deliverables, TCAI shall proceed with all other tasks and activities that can be conducted independently of these deliverables, in accordance with the schedule set forth in this Agreement.

## VI. HUMAN HEALTH RISK ASSESSMENT

15. Draft and Final Human Health Risk Assessment Work Plan. During the RI/FS process, EPA will complete a Baseline Human Health Risk Assessment. EPA will prepare a draft and final Human Health Risk Assessment Work Plan consistent with the



SOW and in accordance with EPA guidance and the NCP. The Baseline Human Health Risk Assessment shall be completed by EPA in cooperation with and with participation by TCAI. EPA will coordinate closely with the State, the Colville Tribes, the Spokane Tribe, and DOI in the development and implementation of the Baseline Human Health Risk Assessment.

16. EPA will provide, after review of TCAI's Site characterization summary, sufficient information concerning the baseline risks such that TCAI can begin drafting the FS Report and the Memorandum on Refined Risk Management-Based Action Objectives. This information will normally be in the form of two or more Baseline Human Health Risk Assessment memoranda prepared by EPA. One memorandum will generally include a list of the chemicals of concern for human health effects and the corresponding toxicity values. Another should list the current and potential future exposure scenarios, exposure assumptions, and exposure point concentrations that EPA plans to use in the Baseline Human Health Risk Assessment. The public, including TCAI, may comment on these memoranda.

17. After considering any significant comments received, EPA will prepare a Baseline Human Health Risk Assessment Report. EPA will release this report to the public at the same time it releases the Final RI Report. Both reports will be placed in the Administrative Record for the Site.

## VII. DESIGNATION OF PROJECT COORDINATORS

18. On or before the Effective Date of this Agreement, EPA and TCAI shall each designate its own Project Coordinator. Each Project Coordinator shall be responsible for overseeing the implementation of this Agreement. To the maximum extent possible, written communications between TCAI and EPA shall be directed to the Project Coordinator by mail or electronic mail, with copies to such other persons as may be required. EPA and TCAI have the right to change their respective Project Coordinator upon at least ten (10) days notice in writing prior to the change.

19. EPA's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP. In addition, EPA's Project Coordinator shall have the authority, consistent with the NCP, to halt any work or other activity required by this Agreement and to take any necessary response action when he or she determines that conditions at the Site may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinator from the area under study pursuant to this Agreement shall not be cause for the stoppage or delay of work.

## VIII. SAMPLING, ACCESS, AND DATA AVAILABILITY/ADMISSIBILITY

20. All sampling and analysis performed pursuant to this Agreement shall conform to EPA direction and approval regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. TCAI, and any other



entity performing Work for or at the direction of TCAI or EPA, shall ensure that laboratories used to perform the analyses participate in a QA/QC program that complies with the appropriate EPA guidance.

21. Upon request by EPA, TCAI shall allow EPA or its authorized representatives to take split and/or duplicate samples of all samples taken by TCAI. All split and/or duplicate samples taken shall be analyzed by the methods identified in the QAPP. TCAI shall notify EPA at least fifteen (15) days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary.

22. If any portion of the Site, or an off-Site area, to which access is needed for performance of the Work, is owned in whole or in part by an entity not a party to this Agreement, or is administered by DOI, TCAI shall obtain, or use its best efforts (including, where appropriate, reasonable compensation) to obtain, Site access agreements from the present owner(s) within sixty (60) days of EPA approval of the SAP. Such agreements shall provide access for EPA, its contractors and oversight officials, and the State, the Tribes, and DOI and their contractors, and TCAI or its authorized representatives. Such agreements shall specify that TCAI is not EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA prior to TCAI's initiation of field activities. If access agreements are not obtained within the time referenced above, TCAI shall immediately notify EPA of its failure to obtain access. EPA may obtain access for TCAI or perform those tasks or activities with EPA contractors. In the event that EPA performs those tasks or activities with EPA contractors, TCAI shall perform all other activities not requiring access to that portion of the Site, and shall reimburse EPA for all costs incurred in obtaining access and performing such activities. TCAI additionally shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

23. Upon request by TCAI, EPA shall allow TCAI or its authorized representatives to take split and/or duplicate samples for all samples taken by EPA or persons acting on behalf of EPA. All split and/or duplicate samples shall be analyzed in accordance with the methods identified in the QAPP. EPA shall notify TCAI at least fifteen (15) days in advance of any sample collection activity, unless shorter notice is agreed to by TCAI. TCAI shall have the right to take any additional samples that it deems necessary. If work is to be performed in areas that the Tribes deem culturally sensitive, TCAI may not be allowed to take the split samples. In those circumstances, EPA will coordinate with the Tribes to arrange for the split samples to be provided to TCAI.

24. Each Party shall provide to the other, upon request, copies of all non-privileged records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents, that relate to activities undertaken to implement this Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.



Consistent with section 3.1 of the attached SOW, TCAI will provide data on operations of the Trail Smelter relevant to identification of contaminants of potential concern at the Site, upon request by EPA.

25. TCAI may assert business confidentiality claims covering part or all of the records submitted to EPA under this Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified TCAI that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to TCAI.

26. No claim of confidentiality or privilege shall be made to any data or other factual information generated under the terms of this Agreement, including but not limited to sampling, monitoring, hydro-geologic, scientific, chemical, and engineering data. This term is not intended as a general waiver of any privilege which may apply to a Party's own independent evaluation of data or other factual information generated under the terms of this Agreement.

27. To the extent that access to any portion of the Site is controlled by TCAI, at all reasonable times, EPA and its authorized representatives shall have the authority to enter and freely move about all property at the Site and off-Site areas where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Site or TCAI and its contractor pursuant to this Agreement; reviewing the progress of TCAI in carrying out the terms of this Agreement; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device, or other documentary type equipment; and verifying the data submitted to EPA by TCAI. TCAI shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Agreement. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law. All parties with access to the Site under this paragraph shall comply with all approved Health and Safety Plans.

28. In entering into this Agreement, the United States and TCAI waive any objections solely between them to the admissibility into evidence, in any action between them, of any data gathered, generated, or evaluated in the performance or oversight of the RI/FS that has been verified according to the quality assurance/quality control procedures required by the Agreement or any EPA-approved Work Plans or Sampling and Analysis Plans. If TCAI objects to any other data relating to the RI/FS, TCAI shall submit to EPA a report that identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations on the use of the data. The report must be submitted to EPA within fifteen (15) days of the monthly progress report containing the data.



IX. FINAL REPORTS, PROPOSED PLANS, RECORD OF DECISION AND ADMINISTRATIVE RECORD

29. EPA shall release to the public any final report prepared pursuant to this Agreement and any non-privileged analysis using data collected pursuant to this Agreement. EPA shall prepare and release to the public the Proposed Plan and Record of Decision in accordance with CERCLA and the NCP. No final report prepared pursuant to this Agreement should be privileged.

30. EPA will maintain the Administrative Record for selection of any response action. The Administrative Record file shall include those materials cited in 40 C.F.R. 300.810 and any other materials that EPA determines are appropriate for inclusion. TCAI shall submit to EPA all documentation concerning the Site developed by or for, or relied upon by, TCAI for performance of the RI/FS that must be included in the Administrative Record file pursuant to 40 C.F.R. 300.810. TCAI shall provide copies of plans, task memoranda, including documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. TCAI must additionally submit any previous studies conducted by or for TCAI or TCM under Canadian, British Columbian, State, local, tribal, or other federal authorities relating to selection of the response action for the Site, and all non-privileged communications between TCAI and Canadian, British Columbian, State, local, tribal, or other federal authorities concerning selection of the response action for the Site. EPA may require TCAI to house one copy of the Administrative Record at each of the community information repositories established at the Site. This Paragraph does not apply to data or other information collected by TCAI independently of this Agreement for the express purpose of evaluating or defending natural resource damage or other claims.

X. DISPUTE RESOLUTION, JUDICIAL REVIEW AND JURISDICTION

31. Except in an action by the United States to enforce a requirement of this Agreement that has not been disputed in accordance with this Section X, or an action by TCAI pursuant to Paragraph 34, any dispute arising under this Agreement shall be as follows: TCAI shall notify EPA's Project Coordinator, in writing, of its dispute within fourteen (14) days of receipt of a disapproval notice, request for performance or payment, or other event or inaction triggering the dispute. TCAI's written statement shall define the dispute, state the basis of TCAI's position, and be sent by certified mail, return receipt requested. EPA and TCAI then have an additional fourteen (14) days to reach agreement. If an agreement is not reached within fourteen (14) days, TCAI may request, in writing, with a copy to EPA's Project Coordinator, a determination by the Director of EPA Region 10's Environmental Cleanup Office ("ECL"). EPA may, within fourteen (14) days of its receipt of TCAI's request, submit a written statement responding to TCAI's written statement. The decision of the Office Director of ECL, in consultation with the Region 10 Administrator, will be EPA's final decision on any matter in dispute under this Agreement other than those matters to which the Technical Review Process referenced below applies. Unless TCAI has invoked the Technical Review



Process for a dispute subject to Paragraph 32, TCAI shall proceed in accordance with EPA's final decision regarding the matter in dispute.

32. Solely for disputes concerning (a) documents specified in part 3 ("Technical Review Process") of Exhibit B ("Technical Review of Upper Columbia River RI/FS"), and (b) a decision by EPA requiring an action that is material and substantial, inconsistent with the principles of risk-based analysis, bioavailability, empirical testing, and field confirmation, not required for consistency with the NCP, and outside the SOW, TCAI may, by notifying EPA's Project Coordinator in writing within ten (10) days of its receipt of the ECL Director's determination, invoke the Technical Review Process described therein. The Parties shall then have an additional fourteen (14) days to resolve the dispute by informal negotiations. If the Parties are unable to resolve the dispute, then TCAI shall provide, within fourteen (14) days of the conclusion of informal negotiations, the Office Director of ECL and Dr. Elizabeth Southerland, Director of the Office of Superfund Remediation and Technology Innovation, by overnight delivery, with a written statement defining TCAI's dispute and stating the basis for TCAI's position. EPA's Project Coordinator will have fourteen (14) days from delivery of that statement to provide a written response to Dr. Southerland and the Office Director of ECL, with a copy to TCAI. From the time that the EPA project coordinator receives notice that TCAI is invoking the technical review process until EPA's time for submitting a written statement to Dr. Southerland has expired neither party shall intentionally initiate a communication with Dr. Southerland regarding the matter that is the subject of this dispute. The Technical Review Process shall then proceed as described at part 3 of Exhibit B. If TCAI does not agree to perform or does not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from TCAI, to seek enforcement of the decision, to seek liquidated damages, and/or to seek any other appropriate relief. Where EPA seeks liquidated damages or another judicial remedy, TCAI reserves the right to assert that EPA's requirements are not consistent with Paragraph 4 above or with this Agreement.

33. Unless EPA agrees otherwise, TCAI remains obligated to perform and conduct activities and submit deliverables on the schedule set forth in the Agreement and Work Plan while a matter is pending in Dispute Resolution. If a dispute is raised regarding a component of a Deliverable or activity, unless it is impracticable to do so, TCAI must continue to submit or conduct the remaining components of the Deliverable or activity. The invocation of Dispute Resolution does not stay the accrual of liquidated damages under this Agreement, except that no such damages shall accrue from the date TCAI submits its written statement of dispute to the Office Director and Dr. Southerland until receipt of the Final Decision in that process. The Parties may agree, in writing, to extend any of the time periods specified in Paragraphs 31 and 32, above.

34. Other than in an action by the United States to enforce this Agreement, TCAI shall not seek judicial review of any dispute arising under this Agreement, except that TCAI or TCM may seek immediate judicial review in the United States District Court for the Eastern District of Washington or the U.S. Court of Claims, as appropriate, on the following issues under this Agreement: (a) the determination by the EPA Region 10



Director of the Office of Environmental Cleanup to access escrowed funds or other financial assurance provided by TCAI; (b) non-compliance with EPA's commitment to resolve disputes (including disputes relating to Force Majeure) in accordance with this Section, and to follow the Technical Review Process described in Exhibit B to this Agreement; (c) enforcement of EPA's obligation to withdraw the UAO upon the Effective Date of this Agreement. Nothing in this Paragraph shall preclude TCAI or TCM from asserting the covenant not to sue and contribution provisions set forth in Paragraphs 55 and 73 of this Agreement, or EPA's noncompliance with this Agreement, as a defense in any action, or EPA's noncompliance with this Agreement as bases to challenge EPA's attempt to access funds placed in escrow by TCAI under Paragraph 49.

35. TCAI seeking judicial review as provided by Paragraph 34 shall not automatically extend, postpone, or affect in any way any obligation of TCAI under this Agreement, or stay the accrual of liquidated damages under this Agreement; however, TCAI may request such relief from the Court during the pendency of judicial review. If TCAI seeks judicial review under Paragraph 34(a), EPA may continue to access the escrowed funds as provided in Paragraph 49 during the course of judicial review. If TCAI prevails on the issue under judicial review, EPA shall return the funds to the escrow account, together with interest at the rate accruing in the account; provided that nothing herein shall require EPA to expend funds in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519.

36. Nothing in this Agreement is intended to create any right in TCAI to challenge the substantive decisions made by EPA during the RI/FS process, nor to preclude TCAI from an ultimate challenge to the Record of Decision or other EPA action, to the extent provided by applicable law.

37. TCAI acknowledges that it is subject to personal jurisdiction in the United States District Court for the Eastern District of Washington or the U.S. Court of Claims, as appropriate. TCAI's entry into this Agreement, its performance of work under this Agreement, and its corporate relationship with TCM are not and shall not be considered bases for liability of TCAI under CERCLA or any other federal, state, Tribal, or common law with respect to the Site. Solely for the limited purpose of an action to enforce its rights and obligations under Paragraphs 4, 40, 41, 43, 50, 57, and 58 of this Agreement, TCM consents to personal jurisdiction in the United States District Court for the Eastern District of Washington or the U.S. Court of Claims, as appropriate. TCM's entry into this Agreement shall not be considered as a basis for finding TCM subject to the personal or subject matter jurisdiction of United States courts for any purpose other than to enforce this Agreement.

## XI. PROGRESS REPORTS AND MEETINGS

38. TCAI shall make presentations at, and participate in, meetings at the request of EPA during the initiation, conduct, and completion of the RI/FS. In addition to discussion of the technical aspects of the RI/FS, topics will include anticipated problems



or new issues. Meetings will be scheduled at EPA's discretion in coordination with TCAI.

39. In addition to the deliverables set forth in this Agreement, TCAI shall provide to EPA monthly progress reports by the tenth (10th) business day of the following month. At a minimum, with respect to the preceding month, these progress reports shall: (1) describe the actions which have been taken to comply with this Agreement during that month; (2) describe the results of sampling and tests and all other data collected or received by TCAI; (3) describe work planned for the next two (2) months with schedules relating such work to the overall project schedule for RI/FS completion; and (4) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

## XII. PARTIES BOUND

40. This Agreement shall apply to and be binding upon each of the Parties and their successors and assigns in accordance with its terms, which have specific, limited application to TCM. Any change in ownership or corporate or other legal status of TCAI or TCM, including but not limited to any transfer of assets or real or personal property, shall in no way alter such Party's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the Party that he or she represents.

41. TCAI and/or TCM, as appropriate, shall provide a copy of this Agreement to any subsequent owners or successors before ownership rights are transferred in any corporate acquisition or other transaction that results in: (1) the transfer of substantially all the assets of TCAI or TCM, or (2) constitutes a transfer of ownership rights that results in a change of control of TCAI or TCM. TCAI shall provide a copy of this Agreement to all contractors, subcontractors, laboratories, and consultants retained by it to conduct any work performed under this Agreement, within fourteen (14) days after the Effective Date of this Agreement or the date of retaining their services, whichever is later. TCAI shall condition any such contracts upon compliance with this Agreement.

42. Notwithstanding the terms of any service or other contract, the Parties hereto are responsible for their compliance with this Agreement and for ensuring that their employees, contractors, consultants, subcontractors and agents comply with this Agreement, to the extent that these persons perform any Work. EPA shall ensure compliance with the terms of this Agreement addressing technical validity and reliability of data in those instances where Work is carried out by entities other than TCAI or its contractors.

## XIII. COSTS

43. Costs incurred by TCAI or TCM pursuant to the Settlement Agreement, together with the \$500,000 good faith payment made by TCAI to the United States for



data compilation efforts relating to the Site, shall be credited against the ultimate liability of TCM and/or TCAI, if any, for Site response costs.

44. TCAI shall pre-pay, on an annual basis, EPA's estimated Future RI/FS Costs for the succeeding fiscal year. After the Effective Date of this Agreement, and annually thereafter, EPA shall provide TCAI with its estimate of Future RI/FS Costs for the succeeding year the costs EPA expects to incur in connection with the RI/FS under this Agreement. For fiscal year 2007 and the remainder of fiscal year 2006, TCAI shall prepay EPA's estimated Future RI/FS Costs for the period between the Effective Date of this Agreement through September 30, 2007.

45. Within thirty (30) days of receipt of each annual cost estimate, TCAI shall pay the estimated costs by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures provided to TCAI by EPA Region 10, or by a certified or cashier's check. The amounts paid by TCAI shall be deposited in the Upper Columbia River Special Account within the EPA Hazardous Substances Superfund pursuant to Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9622. Payment shall be accompanied by a statement identifying the name and address of the entity(ies) making the payment, the Site name, the EPA Region Site/Spill ID#106X, and EPA docket number 10-2006-0219. Copies of the transmittal letter and payment information should be sent simultaneously to the EPA Project Coordinator and to:

Superfund Accounts Receivable  
EPA Cincinnati Finance Center  
MS-NWD  
Cincinnati, Ohio 45268

Interest shall accrue from the later of: the date payment of a specified amount is due; or the date of the expenditure. The interest rate is the rate of interest on investments for the Hazardous Substances Superfund in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

46. TCAI shall also reimburse any Future RI/FS Costs incurred by EPA in excess of the pre-paid amounts, and costs incurred by EPA in connection with the Dispute Resolution and Technical Review processes. Any funds unexpended from an annual prepayment shall be applied only to such Future RI/FS Costs for subsequent years, with any such funds unexpended at the completion of the Work under this Agreement to be returned to TCAI. Payment shall be made in accordance with the procedures set forth in Paragraph 45 within thirty (30) days of TCAI's receipt of a demand for reimbursement, unless TCAI invokes Dispute Resolution and pays the disputed amount into escrow within that period.

47. Any disputes regarding payment of Future RI/FS costs shall be governed by the Dispute Resolution provision of this Agreement. TCAI shall identify any contested costs and the basis of its objection. All undisputed costs shall be remitted by TCAI in accordance with the schedule set forth above. Disputed costs shall be maintained by TCAI in an escrow account while the dispute is pending. TCAI bears the burden of



establishing an EPA accounting error or the inclusion of costs outside the scope of this Agreement.

48. In addition to costs to be paid by TCAI described above, TCAI shall pre-pay to EPA, within fifteen (15) days of the Effective Date of this Agreement and annually thereafter, the sum of \$500,000, which shall be available to fund costs incurred by either of the Tribes, and/or the State, for reviewing plans or reports and otherwise participating in the RI/FS process ("Participation Costs"). This amount shall be allocated as agreed among the Tribes and the State, except that if the Tribes and State are unable to reach such agreements within ninety (90) days of the Effective Date, it shall be allocated one-third to each entity. In addition, TCAI shall pre-pay to DOI within fifteen (15) days of the Effective Date of this Agreement and annually thereafter, the sum of \$600,000, which shall be available only to fund costs incurred by DOI for reviewing plans and reports and otherwise participating in the RI/FS process, and not for any other purpose including but not limited to natural resource damage assessment. DOI will provide payment instructions to TCAI within ten (10) days after the Effective Date. Such Participation Costs are in addition to and exclusive of any costs incurred by EPA to obtain technical assistance relating to EPA's oversight of the RI/FS from one of the Tribes, the State, or DOI. Unexpended funds for any year shall be applied only to Participation Costs for subsequent years, with any such funds unexpended at the end of this Agreement to be returned to TCAI. EPA shall only distribute funds to the Tribes and the State under this Paragraph consistent with 40 C.F.R. part 35, subpart O. After five (5) years this funding arrangement will be renegotiated. Nothing in this Paragraph is intended to preclude the Tribes, the State, and DOI from further discussions with TCAI and TCM concerning adjusting these pre-payment amounts should these entities' annual Participation Costs exceed the pre-payment amounts provided by this Paragraph.

#### XIV. FINANCIAL ASSURANCES

49. Within ten (10) days of the Effective Date of the Settlement Agreement, TCAI shall place in escrow with a bank or other escrow agent located in the United States and acceptable to EPA, the sum of twenty million United States dollars (\$20,000,000). EPA can access all or any portion of the escrowed funds upon a determination by the ECL Director that TCAI has, without good cause, ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, or otherwise is in material breach of its obligations under this Agreement. Before EPA can make such a determination, the underlying action or inaction giving rise to the ECL Director's determination of a material breach must have (1) undergone dispute resolution pursuant to paragraphs 31 or 32, as appropriate; or (2) been eligible for dispute resolution, but TCAI elected to forego such process. Upon the ECL Office Director's determination, EPA will send written instructions to the Escrow Agent to release those funds. The Escrow Agent shall release those funds only in accordance with EPA's instructions and only for the specific purpose of funding performance of the RI/FS and/or Future RI/FS Costs, as defined herein, and only at such times and in such amounts as EPA, in its



sole discretion, may authorize. Any amounts received by EPA from the escrow account shall be deposited in the Upper Columbia River Special Account within the EPA Hazardous Substances Superfund pursuant to Sections 104 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9622. Upon EPA's approval of the completed Work under this Agreement, all amounts remaining in the escrow account, with accrued interest, if any, shall be returned to TCAI.

50. If TCAI files for bankruptcy protection, is declared insolvent, or otherwise is unable to fulfill its obligations under the Settlement Agreement, TCM shall assume all of TCAI's outstanding rights and obligations under this Agreement.

51. a. Within fourteen (14) days of the Start Date, TCAI shall secure, and shall maintain in force for the duration of this Agreement the below listed insurance. All policies where permitted by law will name the United States as an additional insured.

i. Wrap-Up Liability Insurance insuring Teck Cominco American Incorporated and their respective directors, officers, employees and agents (including the Engineer, the Contractor and its consultants, sub-consultants, contractors and sub-contractors either directly or indirectly employed under this Agreement against liability arising from personal injury (including death) and from claims for loss of or damage to property which may arise directly or indirectly out of the performance of the work.

Such insurance shall be for an amount not less than \$US 20 million unless this limit is not commercially available.

This insurance includes:

- (A) contractual liability;
- (B) products and completed operations;
- (C) cross liability;
- (D) contingent employers liability;
- (E) coverage for claims arising from use of machinery and equipment attached to licensed vehicles;
- (F) non-owned automobile;
- (G) personal injury and property damage;
- (H) a statement that this insurance is primary to any other coverage maintained by the parties insured;
- (I) sudden and accidental pollution liability, which if commercially available, may be sub-limited.



ii. Automobile liability insurance with limits of \$US 2 million.

iii. Workers' compensation insurance and Employers' Liability insurance as required by the applicable laws and regulations of the jurisdictions in which the work is being carried out, including voluntary payments.

iv. Professional Errors and Omissions in the amount of \$US 1 million.

b. For the duration of this Agreement, TCAI shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of employer's liability insurance and workmen's compensation insurance for all persons performing work on behalf of TCAI, in furtherance of this Agreement.

c. If TCAI demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then with respect to that contractor or subcontractor TCAI need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

d. Prior to commencement of any work under this Agreement, and annually thereafter on the anniversary of the Effective Date of this Agreement, TCAI shall provide to EPA a detailed letter outlining the insurance program in place for this Agreement.

52. At least seven (7) days prior to commencing any Work under this Agreement, TCAI shall certify to EPA that the required insurance has been obtained.

53. TCAI agrees to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action to the extent arising from or on account of acts or omissions of TCAI, its employees, agents, servants, receivers, successors, assignees or contractors, in carrying out activities on behalf of TCAI under this Agreement. The United States Government or any agency or authorized representative thereof shall not be deemed a party to any contract entered into by TCAI in carrying out activities under this Agreement.

#### XV. RECORD PRESERVATION

54. TCM and TCAI shall preserve all records and documents in their possession or control that relate to the Work for a minimum of ten (10) years after issuance of the Final ROD for the Site. TCM and TCAI shall acquire and retain copies of all such documents that relate to the Site and are in the possession of any of their employees, agents, accountants, contractors, or attorneys. After this ten (10) year period, TCM and TCAI shall notify EPA at least ninety (90) days before the documents are scheduled to be destroyed. If during the interim period, EPA requests copies of any



such documents, TCM and TCAI shall, at no cost to EPA, give EPA the documents or copies of the documents, except those documents as to which TCM or TCAI asserts a valid claim of privilege.

#### XVI. COVENANTS AND RESERVATIONS

55. Except as specifically provided by the United States' Reservations of Rights in paragraph 56, the United States covenants not to sue or to take administrative action against TCM and TCAI pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. §6973, for (i) civil penalties or injunctive relief for non-compliance with the Unilateral Administrative Order issued by EPA to TCM on December 11, 2003, or (ii) for performance of the RI/FS, or for the recovery of Future RI/FS costs paid by TCAI. This covenant not to sue shall take effect upon the Effective Date of this Settlement Agreement, and is conditioned upon the satisfactory performance by TCAI and TCM of their obligations under this Agreement. This covenant not to sue extends to TCAI, TCM, Teck Cominco Alaska Incorporated and Teck Cominco Limited, and to the employees, officers, directors, and agents of each of them acting in their official capacities.

56. The United States reserves, and this Agreement is without prejudice to, all rights against TCAI and TCM with respect to all matters not expressly included within the United States' Covenant Not to Sue in paragraph 55, above. Notwithstanding any other provision of this Agreement, the United States reserves all rights against TCAI and TCM with respect to:

- i. criminal liability;
- ii. liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of any natural resource damages assessment;
- iii. liability for performance of response actions other than the RI/FS;
- iv. liability, including but not limited to liability under Section 107 of CERCLA, for any costs incurred by the United States in connection with the Site not otherwise paid or reimbursement under this Agreement by TCAI;
- v. liability, based upon TCAI's or TCM's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after execution of this Settlement Agreement by TCAI or TCM; and
- vi. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.



57. Subject to Paragraph 58, below, TCAI and TCM covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to response actions performed or response costs incurred in connection with the RI/FS at the Site under this Agreement after the Effective Date of the Agreement, including but not limited to:

i. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law; and,

ii. any such claims arising under the United States Constitution, the Washington Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

For purposes of this Paragraph 57, the term "United States or its contractors or employees" does not include DOI, the Tribes or the State of Washington. This paragraph does not release any non-party for activities outside of its status as a federal contractor or employee.

58. Notwithstanding any other provision of this Agreement, other than Paragraphs 57.(i) and 78, TCAI and TCM reserve, and this Agreement is without prejudice to, any claim for recovery of or contribution to response costs or natural resource damages with respect to the Site based on the alleged liability of any United States agency other than EPA, or any other entity, under Sections 107 or 113 of CERCLA, 42 U.S.C. § 9607 and § 9613.

59. Except as expressly provided in this Agreement, each party reserves all rights and defenses it may have. Nothing in this Agreement shall affect EPA's removal authority or EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages.

60. Following satisfaction of the requirements of this Agreement, TCAI and TCM shall have resolved their liability to EPA for the Work pursuant to this Agreement. TCAI and TCM are not released from liability, if any, for any response actions taken or response costs incurred beyond the scope of this Agreement.

#### XVII. DELAY IN OR FAILURE OF PERFORMANCE

61. "*Force Majeure*," for purposes of the Settlement Agreement, shall mean any event arising from causes beyond the control of TCAI and TCM, of any contractors employed by TCAI or TCM to implement the Settlement Agreement, or of any entity controlled by TCAI or TCM, that delays or prevents the performance of any obligation under the Settlement Agreement despite TCAI's best efforts to fulfill the obligation. "Best efforts to fulfill the obligation" includes best efforts to anticipate and avoid any potential force majeure event and to minimize any resulting delay to the greatest extent



possible. "*Force Majeure*" does not include financial inability or failure to attain required performance standards.

62. If any event occurs or has occurred that may delay the performance of any obligation of TCAI under this Agreement, whether or not caused by a *Force Majeure* event, TCAI shall notify by telephone the EPA Project Coordinator or, in his or her absence, the Region 10 Office of Environmental Cleanup Director, within five (5) business days of when TCAI actually knew that the event is likely to cause a delay. Within fifteen (15) business days thereafter, TCAI shall provide, in writing, the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and a statement as to whether, in the opinion of TCAI, such event may cause or contribute to an endangerment to public health or the environment. TCAI shall exercise best efforts to avoid or minimize any delay and any effects of a delay. The parties recognize that failure to comply with the above written notice requirements shall entitle EPA to liquidated damages of \$10,000 per day.

63. If EPA agrees that the delay or anticipated delay is properly justified under the terms of this Section, the time for performance of the TCAI obligations under this Agreement that are affected by the delaying event shall be extended by written agreement of the Parties for a period of time not to exceed the actual duration of the delay caused by the delaying event. An extension of the time for performance of the obligation directly affected by the delaying event shall not extend the time for performance of any subsequent obligation, unless that subsequent obligation depends upon the performance of the original obligation.

64. If EPA does not agree that the delay or anticipated delay is properly justified under the terms of this Section, or does not agree with TCAI on the length of the extension, the issue shall be subject to the Dispute Resolution procedures set forth herein. In any such proceeding, TCAI shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay is properly justified, that the duration of the delay was or will be warranted under the circumstances, that TCAI did exercise or is exercising due diligence by using its best efforts to avoid and mitigate the effects of the delay, and that TCAI complied with the requirements of this Section. Should TCAI carry the burden set forth in this Paragraph, the delay at issue shall not be deemed to be a breach of this Agreement.

65. A delay in performance of a specific task required under this Agreement shall not affect TCAI's obligations to fully perform all other obligations it has under this Agreement that are not directly dependant on the initial delayed task. After a delay the parties shall establish new deadlines for all affected tasks.

66. TCAI shall be liable for liquidated damages for each failure to comply with the terms of this Agreement, unless such failure is attributable to a *Force Majeure*. Except where caused by *Force Majeure*, or unless it is determined in the course of Dispute Resolution or the Technical Review Process that there was no failure to comply, for each failure to comply with compliance milestones or to submit timely or



adequate reports or other deliverables required by this Agreement, TCAI shall pay liquidated damages in the amount of two thousand dollars (\$2,000) per day for the first thirty (30) days, five thousand dollars (\$5,000) per day for days thirty-one through sixty (31-60), and ten thousand dollars (\$10,000) for each day thereafter until TCAI cures such failure. EPA may seek these contractual liquidated damages or statutory fines and penalties (if available), but not both. "Compliance" shall include completion of the activities under the Agreement or any work plan or other plan approved under the Agreement, in accordance with: all applicable requirements of law, the Agreement, the SOW, and any plans or other documents approved by EPA pursuant to the Agreement and within the specified time schedules established by and approved under the Agreement.

67. Where a revised submission by TCAI is required, liquidated damages shall continue to accrue until a satisfactory deliverable is produced. EPA will provide written notice for breaches of this Agreement that are not based on timeliness; nevertheless, damages shall accrue from the day a breach commences. Payment shall be due within thirty (30) days of receipt of a demand letter from EPA. TCAI shall pay interest on the unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. § 3717. If the liquidated damages are not paid in full within ninety (90) days after they are due, TCAI shall further pay a handling charge of one percent (1%), to be assessed at the end of each thirty-one (31) day period, and a six percent (6%) per annum penalty charge.

68. TCAI may dispute EPA's right to the stated amount of damages by invoking the Dispute Resolution procedures under Section X, above. Damages shall accrue, but need not be paid, during the dispute resolution period. If TCAI does not prevail upon resolution, all damages shall be due to EPA within thirty (30) days of resolution of the dispute. If TCAI prevails upon resolution, no damages shall be paid.

69. Except for the election between liquidated damages and fines or penalties required by Paragraph 66, the liquidated damages provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of TCAI's failure to comply with this Agreement, including, but not limited to, conduct of all or part of the RI/FS by EPA. Payment of liquidated damages does not alter TCAI's obligation to complete performance under this Agreement.

#### XVIII. EFFECT OF AGREEMENT ON OTHER CLAIMS/CONTRIBUTION PROTECTION

70. Upon the Effective Date of this Agreement, the EPA shall withdraw the UAO issued against TCM on or about December 11, 2003.

71. Except as expressly provided in this Agreement, the Parties reserve all rights, claims, and defenses they may have. Specifically, TCAI and TCM enter into this Agreement with the United States voluntarily, and this voluntary undertaking of the



obligations under this Agreement does not constitute and shall not be construed as an admission by TCAI, TCM, or any other person or entity of any fact or liability.

72. The participation of TCAI and TCM in this Agreement and the Work is not admissible in evidence against TCAI or TCM in any judicial or administrative proceeding other than a proceeding by one of the Parties hereto to enforce this Agreement.

73. Except as provided by Paragraphs 57 and 58, TCAI and TCM retain their rights to assert claims against other potentially responsible parties at the Site.

74. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, at law or in equity, which the United States, TCAI or TCM may have against any person or other entity not a Party to this Agreement or which an entity other than a Party may have against TCAI, TCM or the United States.

75. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to or establish a basis for jurisdiction in local, state or federal courts in the United States for, any person not a Party to this Agreement. The Parties reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto, and against any agency of the United States other than the EPA.

76. The Parties agree that by compliance with this Agreement, TCAI and TCM are entitled to the full extent of the benefits provided by Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2), for all matters addressed in this Agreement. For the purposes of this Paragraph "matters addressed" are the performance of the Work and the payment of all costs paid or to be paid by TCAI under this Agreement.

#### XIX. MISCELLANEOUS

77. This Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

78. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. §300.700(d).

79. No Party by entering into this Agreement, assumes any liability for any injuries or damages to persons or property resulting from acts or omissions by any other Party.

80. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, in addition to any specific provision contained herein, it shall be directed to the individuals at the



addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to the United States, EPA, TCAI, and TCM:

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P. O. Box 7611  
Washington, D.C. 2004-7611  
RE: DJ #90-11-2-07883

As to EPA:

Director, Environmental Cleanup Office  
U.S. Environmental Protection Agency,  
Region 10 1200 Sixth Avenue, ECL-117  
Seattle, WA 98101  
Regional Counsel  
U.S. EPA Region 10,  
ORC-158  
1200 Sixth Avenue  
Seattle, WA 98101

Kevin Rochlin  
EPA Project Coordinator  
U. S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue  
Seattle, WA 98101

As to TCAI:

C. Bruce DiLuzio, Esq.  
Vice President, Law and Administration  
Teck Cominco American Incorporated  
P.O. Box 3087  
Spokane, WA 99220

David W. Godlewski  
Vice President, Environment and Public Affairs  
Teck Cominco American Incorporated  
P.O. Box 3087  
Spokane, WA 99220



As to TCM:

G. Leonard Manuel, Esq.  
Vice President and General Counsel  
Teck Cominco Metals Ltd.  
600-200 Burrard Street  
Vancouver, B.C. V6C3L7

81. This Agreement and its Exhibits A and B constitute the final, complete and exclusive Agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Agreement.

82. This Agreement may be amended by mutual agreement of EPA, TCAI and TCM. Amendments shall be in writing and shall be effective when signed by authorized representatives of EPA, TCAI and TCM. EPA Project Coordinators do not have the authority to sign amendments to the Agreement.

83. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by TCAI will be construed as relieving TCAI of its obligation to obtain such formal approval as may be required by this Agreement. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules, and attachments required by this Agreement are, upon approval by EPA, incorporated into this Agreement.

84. This Agreement shall terminate when TCAI demonstrates, in writing, and certifies to the satisfaction of EPA that all activities required under this Agreement, including any additional work, payment of Future RI/FS Costs, Participation Costs, and any liquidated damages owed under this Agreement, have been performed and EPA has approved the certification. This notice shall not, however, terminate the parties' obligations to comply with Sections XV and XVI of this Agreement.

IT IS SO AGREED:

**FOR THE UNITED STATES OF AMERICA:**


Date: 6-2-06

By: 

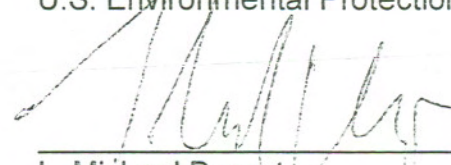
John C. Cruden  
Deputy Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice



Date: 6/2/6

By:   
Ann R. Klee  
General Counsel  
U.S. Environmental Protection Agency

Date: June 2, 2006

By:   
L. Michael Bogert  
Regional Administrator, Region X  
U.S. Environmental Protection Agency

**FOR TCM:**

Date: 6/2/6

By:   
Douglas H. Horswill  
Senior Vice President  
Environment and Corporate Affairs  
Teck Cominco Metals Ltd

**FOR TCAI:**

Date: 6/2/06

By:   
David W. Godlewski  
Vice President, Environment & Public Affairs  
Teck Cominco American Incorporated